NO. 77-1580

IN THE

Supreme Court of the United States

B. J. GIST, ET AL,
Petitioners

v.

STAMFORD HOSPITAL DISTRICT, ET AL,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE ELEVENTH SUPREME JUDICIAL DISTRICT OF TEXAS AT EASTLAND, TEXAS

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SUBJECT INDEX

LIST OF AUTHORITIES

CASES

NO. _____

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE ELEVENTH SUPREME JUDICIAL DISTRICT OF TEXAS AT EASTLAND, TEXAS

B. J. Gist, Lem Ruark, and Anita Harvey MacGregor, hereby petition this Court for a Writ of Certiorari to review the judgment of the Court of Civil Appeals of Eastland, Texas entered in this cause on October 13, 1977.

OPINIONS BELOW

The District Court did not render an opinion except as reflected in its judgment which is not reported; a copy of said judgment is attached hereto as Exhibit A. The

opinion of the Court of Civil Appeals is reported in 557 S.W.2d 556; a copy thereof is attached hereto as Exhibit B.

JURISDICTION

(a) Petitioners sought to have an act of the Texas Legislature and the Texas Constitutional provision authorizing said act declared void as contrary to the 14th Amendment to the United States Constitution. Additionally, Petitioners contend that the holding of the trial court and the Court of Civil Appeals barring Petitioners (because another citizen had contested the validity of said Legislative act as being contrary to the Texas Constitution) from protecting their property from said Texas Legislative act and Texas Constitutional provision, is contrary to the Equal Protection and Due Process Clauses of the United States Constitution.

(b) The judgment sought to be reviewed was entered on October 13, 1977.

(c) Rehearing in the Court of Civil Appeals was denied on November 13, 1977, (Exhibit C). Application for writ of error was denied by the Supreme Court of Texas on January 25, 1975, (Exhibit D). Petitioners' Motion for Rehearing was overruled on the 1st day of March, 1978, thus constituting the opinion of the Court of Civil Appeals a final judgment (as of March 1, 1978) of the highest Court of the State of Texas in which a decision in this case could be had, (Exhibit D).

(d) The statutory provision conferring jurisdiction on this Court is 28 U.S.C. 1257(3). Rule 19(1)(a).

QUESTIONS PRESENTED FOR REVIEW

1. Whether or not the Court of Civil Appeals erred in holding that the prior suit by a citizen named Vinson, (holding that the Legislative enactment expanding the Stamford Hospital District did not violate the Texas Constitution) is res judicata to this suit wherein the Petitioners attempt to protect their private property from void taxation because said Legislative enactment and the Texas Constitutional provision authorizing same are both contrary to the United States Constitution.

2. Whether or not the prior suit which these Petitioners were not parties and which raised only a Texas Constitutional question is res judicata of this suit filed by these Petitioners raising Federal Constitutional questions affecting their private property rights.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

1. The 14th Amendment to the Constitution of the United States.

2. Senate Bill No. 450, being Chapter 563 of the Regular Session of the 63rd Legislature of the State of Texas authorizing the expansion of the Stamford Hospital District (Exhibit E).

3. Article 9, Section 9, of the Constitution of the State of Texas (Exhibit F).

STATEMENT OF THE CASE

This suit was filed by Petitioners who are land owners living within the expanded boundaries of the Stamford

Hospital District seeking to have said Legislative enactment expanding said Hospital District and the Texas Constitutional provision authorizing same declared void as contrary to the 14th Amendment of the Constitution of the United States, and for injunctive relief preventing the taxation of these Petitioners private properties.

The Federal question sought to be reviewed was raised in several paragraphs of the initial pleading filed by Petitioners commencing this suit. (Doc. 1, pages 2-7)

The trial court granted the motion for summary judgment for Defendants based on only one ground that a prior suit by a citizen named Vinson (which these Petitioners were not parties and which raised only one question whether or not the Legislative enactment was contrary to Texas Constitution) was res judicata as to all issues pleaded in this cause. (Doc. 1, pp. 22-26) Petitioners reply to said motion (Doc. 1, pp. 28-42) reads in part as follows:

"Said Motion for Summary Judgment ignores the well-settled principles of law that persons whose properties are being subjected to unlawful and unconstitutional taxes can seek injunctive relief in a present suit or can wait until the taxes are attempted to be collected and assert their constitutional defenses and the fact that someone else may have complained about the unconscionable law on other grounds could not deprive these Plaintiffs of their private and constitutional rights. That the *Billy Vinson suit, No. 11757 in the 104th District Court of Jones County, Texas,* relied on by the Defendants to be res judicata could not be res judicata as to these Plaintiffs for the following reasons:

A. These Plaintiffs were not parties to said suit.

B. Said suit does not involve the same questions.

C. The facts are different.

D. The issues raised in said suit are different.

E. The Plaintiffs have the right to raise, at this time, constitutional questions involving their private, individual, and property rights.

F. The Plaintiffs' property have been subjected to an unconstitutional tax contrary to the U. S. Constitution which these Plaintiffs have a right to defend against and which constitutional quesiton was not raised in the *Billy Vinson suit* and could not have been raised by these Plaintiffs as they were not a party to said suit.

G. The *Billy Vinson suit* did not pass upon the important questions now raised before this Court involving a constitutional right of these Plaintiffs and involving their individual and property rights and the protection of same under the equal protection laws and the due process laws of the Constitution of the United States.

H. The *Billy Vinson suit* did not raise or present to the Court the question of whether or not the property of these Plaintiffs is being taxed contrary to the equal protection clause of the U. S. Constitution.

I. The *Billy Vinson suit* did not raise or present to the Court the question of whether or not the Plaintiffs in this cause are having their property taken from them without due process of law and contrary to the United States Constitution.

The federal question was raised in numerous points in the brief of Appellants filed in the Court of Civil

Appeals (Doc. 4) and by assignments of error in Appellants Motion for Rehearing (Doc. 5). The federal question was also urged in the application for Writ of Error to the Supreme Court of Texas (Doc. 7) and in the Motion for Rehearing filed by Petitioners in the Supreme Court of Texas (Doc. 9). The opinion of the Court of Civil Appeals overruled these contentions holding that these Petitioners could not have their day in court and protect their private property rights from said Texas Legislature enactment and Texas Constitutional provision irrespective of whatever one or both of same were contrary to the United States Constitution (Exhibit B).

REASONS FOR GRANTING THE WRIT

The Petition should be granted to prevent the unlawful taxation of the properties of the Petitioners and to prevent the further arbitrary creation and expansion of hospital districts for the purpose of taxing the properties of those who do not have equal representation or equal weight vote. The Texas Constitutional provision, Article 9, Section 9, of the Texas Constitution permits the arbitrary expansion of hospital districts to include portions of counties anywhere in the state of Texas without any provision that said counties or portions thereof be contiguous or adjacent. Said constitution provision permits Legislative acts as the one in this cause to expand a hospital district purely for the purpose of taking in the properties of these Petitioners for taxation purposes knowing that they would not have equal weight vote and could not prevent same under said Texas Constitutional provision. The arbitrary manner of said expansion in this

cause is shown on Exhibit G attached hereto, the shaded portion near Stamford being the original district and the long prong extending south about 35 miles to Abilene, Texas being the expanded portion. Petitioners and their properties have been made subject to taxation by a Legislative enactment and constitutional provision which they believe is clearly unconstitutional. They have the right to present for judicial review the constitutionality of said acts. A suit for declaratory judgment and injunction restraining the assessment and collection of said taxes is the proper manner to present to the Courts the question of the constitutionality of said Constitutional provision and legislative enactment. *City of Houston v. Standard-Triumph Motor Co., Inc.,* (Fifth Cir. 1965) 347. F.2d 194.

Petitioners have selected and followed the property procedures for testing the constitutionality of Article 9, Section 9 of the Texas Constitution and said legislative enactment but have had the courthouse doors closed in their faces with the incorrect and palpably wrong holding that a prior suit by another citizen contending that said legislative enactment was contrary to the Texas Constitution was res judicata and prevented the Petitioners from raising the federal constitutional questions in this cause. This Court should correct the erroneous holding of the courts below.

The holding of the Courts below that the *Billy Vinson suit* (*Stamford Hospital District v. Billy Vinson, et al,* 517 S.W.2d 358, Tex. Civ. App.—Eastland 1974, n.r.e.) is res judicata as to all of the causes of action asserted by Petitioners in this cause is clearly wrong for the following reasons:

(a) Petitioners were not parties to said suit.

(b) Said suit did not involve the same facts and said issues raised in said suit were different.

(c) Petitioners have the right to raise at this time constitutional questions involving their private, individual and property rights.

(d) Petitioners properties have been subjected to an unconstitutional tax contrary to the United States Constitution which Petitioners have a right to defend against and which constitutional question was not raised in the Billy Vinson suit and could not have been raised by these Petitioners as they were not parties to said suit.

(e) The *Billy Vinson suit* did not pass upon the important questions now raised before this Court involving Petitioners individual and property rights and the protection of same under the equal protection and due process clauses of the Constitution of the United States.

(f) The *Billy Vinson suit* did not raise or present to the Court the question of whether or not the properties of these Petitioners are being taxed contrary to the equal protection and due process clauses of the United States Constitution.

(g) The *Billy Vinson suit* did not contest the validity of Article 9, Section 9 of the Constitution of the State of Texas as being contrary to the United States Constitution.

(h) The *Billy Vinson suit* was not a class action and the only question raised in said cause was whether or not the Texas Constitutional provision authorizing the creation of the Stamford Hospital District also authorized its expansion.

The so-called doctrine of virtual representation has no application to this cause for the above stated reasons. It cannot be res judicata to any other taxpayer or his property. (50 C.J.S. p. 339) "Of course, the rules do not apply to questions not passed on or to a suit on a different cause of action." (50 C.J.S. p. 339) The Texas Constitutional provision permitting the properties of these Petitioners to be selected for taxation in such a discriminatory and arbitrary manner violates the equal protection clause of the United States Constitution. *Hillsborough TP. v. Cromwell,* 66 S.Ct. 445, 326 U.S. 620, 90 L.Ed. 358. The properties of these Petitioners were singled out purely for the purposes of taxation and for no other reason. The Texas Constitutional provision permitted it and the Legislative enactment expressly and arbitrarily provided for it. Petitioners have no remedy unless this Court intervenes and corrects the holding of the Courts below.

This suit seeks to protect the private property of Petitioners from a tax contrary to the United States Constitution. The *Billy Vinson suit* could not be res adjudicata.

The Court in *Aldrich v. Harding, County Collector,* (Sup. Ct. Ill. 1930) 340 Ill. 354, 172 N.E. 722, held:

> "* * * * The only thing litigated is the validity of the assessment on appellee's property, *and a decision of that question cannot operate as res judicata as to any other taxpayer or any other property.* One taxpayer may seek relief as to his own property and the other taxpayers may not do so. * * * *" (at page 775) (Emphasis ours)

The *Billy Vinson suit* could not be res judicata as to Petitioners, as they were not parties to that suit. *State*

v. Jennings Sewer District (Sup.Ct. of Mo., 1933) 333 Mo. 900, 63 S.W.2d 133, *Oklahoma City, et al v. Eastland, et al* (Oklahoma Sup.Ct.) 135 Okla. 155, 274 Pac. 651; *Commissioners of Internal Revenue v. City National Bank & Trust Co., et al* (Fifth Circuit, 1944) 142 F.2d 771.

In *Avery v. Midland County, Texas, et al* (1968) 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed.2d 45, this Court held as follows:

> "The Equal Protection clause reaches the exercise of state power however manifested, whether exercised directly or through subdivision of the State.
>
> 'Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action* * *.' Cooper v. Aaron, 358 J.S. 1, 17, 78 S.Ct. 1702, 1409, 3 L.Ed.2d 5 (1958).

The rule is stated as follows in 16A C.J.S. p. 582:

> "To satisfy the requirements of due process of law, the legislature must have power to act on the subject matter; the power must not be exercised in an unreasonable, arbitrary, capricious, or discriminatory manner; the act involved must have a legitimate end; the means selected must have a real, or substantial relation to the object sought to be attained; and the policy declared by the statute must have a real and substantial relation such object. . ." (16A C.J.S. p. 581)

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that copy of the above petition for writ of certiorari was served on Mr. J. Shelby Sharpe, 203 Fort Worth Club Building, Fort Worth, Texas 76102, and Mr. David A. Talbot, Jr., Assistant Attorney General of Texas, Post Office Box 12548, Capitol Station, Austin, Texas 78711, Attorneys of Record for Respondents by depositing same in the United States Mail this the 2 day of ~~March~~ May, 1978.

EXHIBIT A

NO. 12073

In The

[redacted] DISTRICT COURT

104th Judicial District

Jones County, Texas

B. J. GIST, ET AL

v.

STAMFORD HOSPITAL DISTRICT, ET AL

FINAL JUDGMENT

ON THIS 28th day of April, 1977, came on to be heard Defendants' Second Motion for Summary Judgment filed herein by the Defendants, Stamford Hospital District, its Board of Directors, composed of Sam Baize, Joseph High, A. C. Humphrey, A. J. Mills, Earl Smith, Eugene Swenson and Eugene Watts and John L. Hill, attorney General of Texas. The Plaintiffs were duly and timely notified of the date and time of this hearing set by Order of the Court entered on March 31, 1977. The Plaintiffs B. J. Gist, Lem Ruark and Anita Harvey MacGregor appeared by and through their attorney of record, and the Defendants Stamford Hospital District and its Board of Directors appeared by and through their attorneys of record, and the Honorable John L. Hill, Attorney General of Texas appeared, and all parties announced ready for the hearing. The Court considered Defendants' Second Motion for Summary Judgment, supported by Affidavit with attached certified copies of the record from cause number 11757 styled *Billy Vinson, et al v. Stamford Hospital District, et al* on the docket of this Court, Plaintiffs' Reply to said Motion for Summary Judgment, the Affidavits in Support of the Reply, all of

the pleadings on file in the cause, and the depositions of all Plaintiffs, and heard the argument of counsel. Being fully advised in the premises, the Court finds that there is no genuine issue as to any material fact in this cause; that the Defendants have presented proper summary judgment proof as required by Rule 166-A, Texas Rules of Civil Procedure, establishing the undisputed facts that cause number 11757 styled *Billy Vinson, et al v. Stamford Hospital District, et al* on the docket of this Court is *res judicata* of the cause at bar entitling Defendants to judgment as a matter of law; and that the Defendants' Second Motion for Summary Judgment should be granted, and that this Judgment should be entered:

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiffs B. J. Gist, Lem Ruark and Anita Harvey MacGregor take nothing by their suit against the Defendants Stamford Hospital District and its Board of Directors composed of Sam Baize, Joseph High, A. C. Humphrey, A. J. Mills, Earl Smith, Eugene Swenson and Eugene Watts, and John L. Hill, Attorney General of Texas; and all costs herein are hereby taxed against the Plaintiffs, for all of which let execution issue.

Plaintiffs B. J. Gist, Lem Ruark and Anita Harvey MacGregor, in open Court except to the Judgment of this Court, and give notice of appeal to the Court of Civil Appeals, Eleventh Supreme Judicial District of Texas, sitting at Eastland, Texas.

SIGNED AND ENTERED this 3rd day of May, 1977.

/s/ J. NEIL DANIEL
J. Neil Daniel
District Judge

EXHIBIT B

NO. 5090

Appeal from Jones County

B. J. GIST, ET AL,
Appellants

v.

STAMFORD HOSPITAL DISTRICT ET AL,
Appellees

B. J. Gist, Lem Ruark and Anita Harvey MacGregor filed their petition for a declaratory judgment complaining of the Stamford Hospital District and its Board of Directors, Sam Baize, A. C. Humphrey, A. J. Mills, Don Rose, Eugene Swenson, Eugene Watts, and Earl Smith, and the Attorney General of Texas seeking to have Senate Bill # 450, being Chapter 563 of the regular session of the 63rd Legislature authorizing the expansion of the Stamford Hospital District, declared null and void and unconstitutional under the Fourteenth Amendment of the United States Constitution. They also sought injunctive relief.

Defendants pleaded res judicata and contended Stamford Hospital District v. Billy Vinson et al, 517 S.W.2d 358 (Tex. Civ. App.— Eastland 1974, writ ref. n.r.e.) is determinative of all issues pleaded by the plaintiffs. The court granted defendants' motion for summary judgment and plaintiffs have appealed.

Appellants contend the Vinson case is not res judicata because they were not parties to that suit and a United States constitutional question is involved in the case at bar.

Able counsel for appellants vigorously contend the court erred in refusing to follow that part of the declaratory judgment act that provides, "No declaration shall prejudice the rights of persons not parties to the proceeding." We disagree.

In Seibert v. City of Columbia, 461 S.W.2d 808 (Mo. Sup. 1970), the court said:

> "We are in full accord with the doctrine of virtual representation. It would be unthinkable in our system of jurisprudence to hold that each taxpayer of a municipality could bring a suit to attack an annexation and that res judicata would not apply because there was not an identity of parties. Of necessity, absent fraud or bad faith, all residents and taxpayers must be bound by the result of litigation of a public nature carried on by one in similar circumstances and having a common interest . . ."

We hold appellants were parties to the Vinson case under the doctrine of virtual representation.

In Cochran County v. Boyd, 26 S.W.2d 364 (Tex. Civ. App.—Amarillo 1930, writ ref'd), the court said:

> "It is true that in attacking the election and the bonds in the Caldwell Case the question of the validity of the bonds, because notice of the election had not been published in accordance with the provisions of Revised Statutes, art. 28, was not specifically raised, but Judge Jackson held that the bonds had been validated by the act of the Legislature, cited in the opinion, which we think is conclusive of all contentions which might be urged here, touching the regularity of the election proceedings. *Moreover, that judgment is conclusive of all issues which might and should have been urged in that case.*

> What this court said in the case of Montgomery v. Huff, supra, quoting from the case of Crane v. L. & H. Blum, 56 Tex. 325, to the effect that the good of society, the preservation of rights and good order, require that when the rights of parties have once been determined by the ultimate tribunal provided by law, the same should pass from the field of strife forever, is peculiarly applicable to this case.
>
> The general rule is that, in the absence of fraud or collusion, a judgment for or against a county or other municipality is binding and conclusive upon all residents, citizens, and taxpayers, in respect to the matters adjudicated which are of general and public interest, and that all other citizens and taxpayers similarly situated are virtually represented in the litigation and bound by the judgment, and this applies especially to judgments relating to the validity of county bonds. 34 C.J. 1028 § 1459.
>
> The reason for this rule is stated by the same authority on page 1029, as follows: 'If this were not so, each citizen, and perhaps each citizen of each generation of citizens, would be at liberty to commence an action and to litigate the question for himself. * * * If a judgment against the county in its corporate capacity does not bind the taxpayers composing the county, then it would be difficult to imagine what efficacy could be given to such judgment.' See, also, 15 R. C. L. 1035, § 510.
>
> The Supreme Court has adhered to the rule in the case of Hovey v. Shepherd, 105 Tex. 237, 147 S.W. 224, 225, in which it is said: 'The interveners were not parties to the suit of the K. C., M. O. R. Co. v. City of Sweetwater, (62 Tex. Civ. App. 242, 131 S.W. 251; Id., 104 Tex. 329, 137 S.W. 1117) at the time the judgment of the court was entered, but they were citizens of that municipal

corporation, and the important question in the case is reached by the announcement of the well-settled proposition of law that, if the matter adjudicated affected the interest of the public as distinguished from the private interest of the citizens of the city, although not parties to the suit, all citizens are concluded thereby.' " (Emphasis added)

In Hodgkins v. Sansom, 135 S.W.2d 759 (Tex. Civ. App.—Fort Worth 1939, writ dism'd jdgmt cor.), the court said:

"It is elementary that the parties in the prior suit are to be held to the rule that all issues and questions which could have been raised in such suit are now deemed to have been raised and litigated.

The only question raised in the instant suit that was not presented in the prior suit is the fact issue that Hodgkins had moved out of the school district and had thereby vacated his office as Trustee when the acts of the Board complained of were had and done. This fact could have been ascertained and was one easily ascertained by the plaintiffs, in the prior suit, if such a condition obtained. Mercer et ux v. Rubey, Tex. Civ. App., 108 S.W.2d 677, writ refused; Metropolitan Life Ins. Co. v. Pribble, Tex. Civ. App., 130 S.W.2d 332, writ refused."

We held the statute was constitutional under the State Constitution and the election was valid in Vinson. We hold appellants and all other citizens and taxpayers similarly situated were virtually represented in Vinson and that the judgment is "conclusive of all issues which might and should have been urged in that case."

We have examined all of appellants' points of error and find no merit in them. They are overruled.

The judgment is affirmed.

ESCO WALTER
Esco Walter
Associate Justice

October 13, 1977

NO. 5090

October 13, 1977

B. J. GIST, ET AL,

v.

STAMFORD HOSPITAL DISTRICT, ET AL.

From the 104th District Court of Jones County.

Opinion by Walter, A. J.

This cause came on to be heard on the transcript of the record and the same being inspected, it is the opinion of the Court that there was no error in the judgment. It is therefore ordered, adjudged and decreed that the judgment of the trial court be, and the same is hereby, in all things affirmed. It is further ordered that the costs incurred by reason of this appeal be, and the same are hereby, taxed against appellants, B. J. Gist, Lem Ruark and Anita Harvey MacGregor, for which let execution issue, and that this decision be certified below for observance.

(Copy Sent To All Attorneys Of Record 10-13-77)

EXHIBIT C

No. 5090

NOVEMBER 3, 1977

B. J. GIST, ET AL,

v.

STAMFORD HOSPITAL DISTRICT, ET AL.

This day came on to be heard Appellants' motion for rehearing and the same, having been duly considered, is hereby overruled.

EXHIBIT D

IN THE
SUPREME COURT OF TEXAS

NO. B-7193

January 25, 1978

B. J. GIST, ET AL,

v.

STAMFORD HOSPITAL DISTRICT, ET AL.

From Jones County, Eleventh District.

Application of petitioners for writ of error to the Court of Civil Appeals for the Eleventh Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicants, B. J. Gist, et al., pay all costs incurred on this application.

IN THE SUPREME COURT OF TEXAS

NO. B-7193

March 1, 1978

B. J. GIST, ET AL,

v.

STAMFORD HOSPITAL DISTRICT, ET AL.

From Jones County, Eleventh District.

Petitioner's motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

I, GARSON R. JACKSON, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand and seal of the Supreme Court of Texas, at the City of Austin, this, the 1st day of March, 1978.

GARSON R. JACKSON, Clerk
By JUDITH E. SULLIVAN, Deputy.
Judith E. Sullivan

EXHIBIT E

STAMFORD HOSPITAL DISTRICT—EXPANSION—ELECTION—TAXATION

CHAPTER 563[54]

S.B. No. 450

An Act relating to the expansion of the Stamford Hospital District; prescribing a procedure for an election on the expansion of the district and levy of tax for meeting requirements of its bonds and its maintenance and operating expenses; providing an alternate method for assessment, equalization, and collection of taxes; providing that the expanded district take over and assume the responsibilities, duties, and liabilities of the district prior to expansion as modified by this Act; amending Chapter 108, Acts of the 59th Legislature, Regular Session, 1965 (Article 4494q, note, Vernon's Texas Civil Statutes); and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Chapter 108, Acts of the 59th Legislature, Regular Session, 1965 (Article 4494q, note, Vernon's Texas Civil Statutes), is amended by adding Sections 1a, 8a, 13a, and 18a to read as follows:

"Sec. 1a. The boundaries of the Stamford Hospital District may be changed so as to include the territory located in Jones and Haskell Counties, Texas, described below, and if such change in boundaries is effected, the district as enlarged shall assume and be obligated to pay

54. Vernon's Ann. Civ. St. art. 4494q note.

all indebtedness of the district as the same exists prior to such expansion of boundaries within the taxing limit approved at the election for which provision is hereafter made, and shall continue to have the same duties and responsibilities over its extended boundaries, as now imposed, except as modified by this Act. In the event the change in boundaries of said District is approved at an election as hereinafter provided, the boundaries of the Stamford Hospital District shall be as follows:

"Beginning on the South line of Haskell County at the East line of Section 87, BBB&C RR Co. Lands, the West line of Section 82, same lands;

"Thence along the NB line of Jones County to the point where said line intersects the EB line of Section 82 and the WB line of Section 57, BBB&C RR. Co. land;

"Thence N with the WB line of Section 57 and 56, BBB&C RR Co. land, the WB line of L. Clary Survey 6, across the GC&SF RR Co. Survey 1 to the SW corner of Section 23 Blk, 2 H&TC RR Co. land, continuing N with WB line of Section 23 and 20 Blk. 2, H&TC RR Co. lands to the SW Corner of A. F. Burchard Survey 42;

"Thence E with SB line Survey 42, 1267 varas;

"Thence N to a point in the NB line Survey 42;

"Thence E to NE corner Survey 42, a point in the WB line J.H. Parkhurst Survey 46;

"Thence N with WB line of the J. H. Parkhurst Survey 46 and the Coryell County School Lands League No. 62 to the NW corner of Sub. No. 7 of League 62;

"Thence E to the NE corner of Sub. No. 7;

"Thence S to the NW Corner of Sub. No. 1 of League No. 62;

"Thence E to the NE corner of Sub. No. 1, a point on the W line of the M. Dunn Survey No. 64;

"Thence N to NWC of M. Dunn Survey 64;

"Thence E with NL of the M. Dunn Survey 64, 968 varas to the NE corner of the M. E. Wadzeck 60 acre tract;

"Thence S to the SE corner of said 60 acre tract;

"Thence E 2971 varas to a point in the WL of the J. M. Blackwell 120 acre tract;

"Thence S to the SBL of the M. Dunn Survey 64, of the NBL of the G. Harris Survey No. 50;

"Thence W 342 varas to NE corner of E. W. Thane 150 acre tract;

"Thence S to SE corner of said 150 acre tract;

"Thence W to SW corner of said 150 acre tract;

"Thence S to SE corner of H. J. Mueller 351 acre tract;

"Thence W to center point on WBL of the George Harris Survey 50;

"Thence S with WBL of Survey No. 50, the Andrew Vascacue Survey, the C. S. Corbett Survey to the SW corner of said Corbett Survey, continuing South across the O. B. Moore Survey and the Rike Survey 2 to the NWC of Section 20 BBB&C RR Co. lands;

"Thence South with WL Section 20 to NW corner, Sec. 21, same lands,

"Thence East with the North lines of Sections 21, 18, 13, 12, 7, 6 and 1 to the NE corner of Section 1, same lands;

"Thence South to the NL of Jones County where said line intersects the East line of Section 1, BBB&C RR Co. lands;

"Thence East with the NL of Jones County to the NW corner of Shackelford County;

"Thence South with the WL of Shackelford County, the East line of Jones County to the NL of Callahan County;

"Thence West with the North line of Callahan County to the EL of Taylor County;

"Thence North with the EL of Taylor County to the NE corner of Payton County;

"Thence West with the NL of Taylor County to its intersection with the WL of the A. Thompson Survey 20.

"Thence North with the WL of Survey 20 to its NW corner;

"Thence in a Northerly direction with the EL of Section 51, Blk. 16, T&P RR Co. lands to the NW corner of Section 50, same lands;

"Thence N 75 deg. E with the NL of Section 50 to the SW corner of Section 49, same lands;

"Thence N 15 deg. W with the WL of Section 49 to its NW corner;

"Thence N 75 deg. E with the NL of Section 49 to its NE corner on the WL of Section 6, Blk. 20, T&P RR Co.;

"Thence N 15 deg. W with the WL of Section 6 to its NW corner;

"Thence N 75 deg. E with the NL of Section 6 to its NE corner on the WL of Sec. 45, Blk. 16, T&P RR Co.;

"Thence N 15 deg. W with the WL of Section 45 to its NW corner;

"Thence East with the NL of Section 45 to its NE corner, the SE corner of Sec. 44, same lands;

"Thence North with the EL of Sec. 44 to its NE corner on the South line of Sec. 43, same lands;

"Thence East with the South line of Section 48 to its SE corner;

"Thence North with the EL of Section 43 to its NE corner, continuing North with the EL of W. M. Delk Survey 241 to an angle point;

"Thence N 15 deg. W with the EL of Survey 241 and the WL of the B. Traveno Survey 190 to its NW corner;

"Thence N 75 deg. E with the NL of Survey 190 to the SE corner of Sec. 47, Blk. 15, T&P RR Co.;

"Thence N 15 deg. W with the EL of Sections 47, 39, 29 & 8, same lands to the NE corner of Sec. 8, continuing North with the EL of Sec. 4, Blk. T&NO RR Co. to its NE corner;

"Thence North across the W. Smith Survey to the SW corner of Section 44, Orphan Asylum Lands;

"Thence East with the South line of Section 44 to the SE corner;

"Thence North with the EL of Sections 44, 39 and 26, Orphan Asylum lands to the NE corner of Section 26;

"Thence West with the NL of Sections 26 and 27 to the NW corner of Sec. 27;

"Thence North with the EL of Sections 19, 10 and 1, Orphan Asylum Lands and the EL of Sections 47 and 38 D&D Asylum Lands to the NE corner of Sec. 38;

"Thence West with the NL of Sections 38, 37 and 36, D&D Asylum Lands to the NW corner of Sec. 36;

"Thence North with the EL of Sec. 32, same lands to the mid-point of the EL of Section 32;

"Thence W across Surveys 32 and 33, D&D Asylum Lands to a point in the WL of Survey 33 midway between its NW and SW corners;

"Thence N with the WBL of said Survey 33 about 81 varas to a point in the WL of said Survey 33;

"Thence W across the J. M. Long Survey No. 3 to the SE corner of Survey 12, Blk. 4, H&TC RR Co. and continuing on West with the SL of said Survey 12 to its SW corner;

"Thence N with the WL of Surveys 12 and 11, Blk. 4, H&TC RR Co. to a point in the WL of Survey 11 at the SE corner of Survey 34, BBB&C RR Co.;

"Thence W with the SB lines of Sections 34, 49 and 62, same lands to the SW corner of said Section 62;

"Thence S with the Eastern BL of Sec. 76, same lands to the SE corner thereof;

"Thence W with the SBL of said Survey 76 to its SW corner;

"Thence N with the WBL of Survey 76 and the EBL of Survey 93, same lands to the midpoint of the EBL of said Section 93;

"Thence W along a line equally dividing Sec. 93 and the East one-half of Sec. 100, same lands to the midpoint of the WBL of the East one-half of said Sec. 100;

"Thence N along the line cutting in half Sec. 100 and 101, BBB&C RR Co. land to the midpoint of the Northern BL of Sec. 101;

"Thence E with the NBL of Sec. 101 and 92, same lands to the NE corner of said Section 92;

"Thence N with the WBL of Sections 78, 79, 80, 81 and 82, BBB&C RR Co. land to the point where the NBL of Jones County intersects the WBL of said Section 82; the place of beginning.

"Sec. 3a. The change in the boundaries of the Stamford Hospital District, as provided in Section 1a above, shall not be effective unless and until such change is approved by a majority of the qualified property taxpaying electors residing within the boundaries described in Section 1a of this Act, voting at an election called for that purpose. The election shall be called by the board of directors of the District and shall be held not less than twenty (20) nor more than sixty (60) days from the date of the order calling such election. The order calling the election shall specify the time and places of holding the same, the form of the ballot and name the presiding and alternate judges for each voting place. Notice of

the election shall be given by publishing a substantial copy of the election order in a newspaper of general circulation in the area described in Section 1a of this Act, once a week for two consecutive weeks, the first publication to appear at least fourteen (14) days prior to the date set for the election. At the election there shall be submitted to the qualified property taxpaying electors residing within the boundaries described in Section 1a of this Act the proposition of whether the boundaries of the Stamford Hospital District shall be expanded so as to include certain territory in Jones and Haskell Counties, Texas and shall all taxable property situated within the expanded boundaries of the District be subject to the levy of annual taxes at a rate not to exceed seventy-five cents (75¢) on each one hundred dollar valuation of taxable property for the purpose of meeting the requirements of the District's bonds, and its maintenance and operating expenses. The ballots shall be printed to provide for voting for or against the proposition:

"The expansion of the boundaries of the Stamford Hospital District and the levy of a tax not to exceed seventy-five cents (75¢) on the one hundred dollar valuation of all taxable property within the expanded boundaries of the district."

"Section 13a. The Board of Directors may by resolution provide that Chapter 595, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4494r—4, Vernon's Texas Civil Statutes), shall be applicable to the assessment, equalization and collection of taxes by the District in lieu of the provisions of Section 13 of this Act.

"Sec. 18a. As a result of recent court decisions relating to elections, the Legislature hereby recognizes there

is some confusion as to the proper qualifications of electors who may participate in certain types of elections. It is therefore expressly provided that the Board of Directors in calling any election required to be held under the provisions of this Act may provide that all qualified electors, including those who own taxable property which has been duly rendered for taxation should be permitted to vote at the election being called, by reason of the aforesaid court decisions; provided, however, in the order calling the election, provision is made whereby the ballots of the resident qualified property taxpaying electors who own taxable property which has been duly rendered for taxation can be tabulated and counted separately from the ballots of the other qualified electors, and in any election so called, a majority vote of the resident qualified property taxpaying voters who own taxable property which has been duly rendered for taxation and a majority vote of all qualified electors, including those who own taxable property which has been duly rendered for taxation, shall be required to sustain the proposition."

Sec. 2. Nothing in this Act shall be construed to violate any provision of the federal or state constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. When any procedure hereunder may be held by any court to be in violation of either of such constitutions, the district shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this Act should be invalid, such invalidity shall not affect the other provisions of this Act or the Act authorizing the creation of the district which can be given effect without the invalid provision,

and to this end the provisions of this Act are declared severable.

Sec. 3. Proof of publication of the notice required in the enactment hereof under the provisions of Article IX, Section 9, of the Texas Constitution, as amended, has been made in the manner and form provided by law pertaining to the enactment of local and special laws, and such notice is hereby found and declared proper and sufficient to satisfy such requirement.

Sec. 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the senate on May 3, 1973: Yeas 30, Nays 1; May 22, 1973, senate concurred in house amendments by a viva-voce vote; passed the house with amendments, on May 21, 1973: Yeas 139, Nays 1, six present not voting.

Approved June 15, 1973.

Effective Aug. 27, 1973, 90 days after date of adjournment.

EXHIBIT F

§ 9. Hospital districts; creation, operation, powers, duties and dissolution

Sec. 9. The Legislature may by law provide for the creation, establishment, maintenance and operation of hospital districts composed of one or more counties or all or any part of one or more counties with power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, for hospital purposes; providing for the transfer to the hospital district of the title to any land, buildings, improvements and equipment located wholly within the district which may be jointly or separately owned by any city, town or county, providing that any district so created shall assume full responsibility for providing medical and hospital care for its needy inhabitants and assume the outstanding indebtedness incurred by cities, towns and counties for hospital purposes prior to the creation of the district, if same are located wholly within its boundaries, and a pro rata portion of such indebtedness based upon the then last approved tax assessment rolls of the included cities, towns and counties if less than all the territory thereof is included within the district boundaries; providing that after its creation no other municipality or political subdivision shall have the power to levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care within the boundaries of the district; providing for the levy of annual taxes at a rate not to exceed seventy-five cents (75¢) on the One Hundred Dollar valuation of all taxable property within such district for the purpose of

meeting the requirements of the district's bonds, the indebtedness assumed by it and its maintenance and operating expenses, providing that such district shall not be created or such tax authorized unless approved by a majority of the qualified property taxpaying electors thereof voting at an election called for the purpose; and providing further that the support and maintenance of the district's hospital system shall never become a charge against or obligation of the State of Texas nor shall any direct appropriation be made by the Legislature for the construction, maintenance or improvement of any of the facilities of such district.

Provided, however, that no district shall be created except by act of the Legislature and then only after thirty (30) days' public notice to the district affected, and in no event may the Legislature provide for a district to be created without the affirmative vote of a majority of the taxpaying voters in the district concerned.

The Legislture may also provide for the dissolution of hospital districts provided that a process is afforded by statute for:

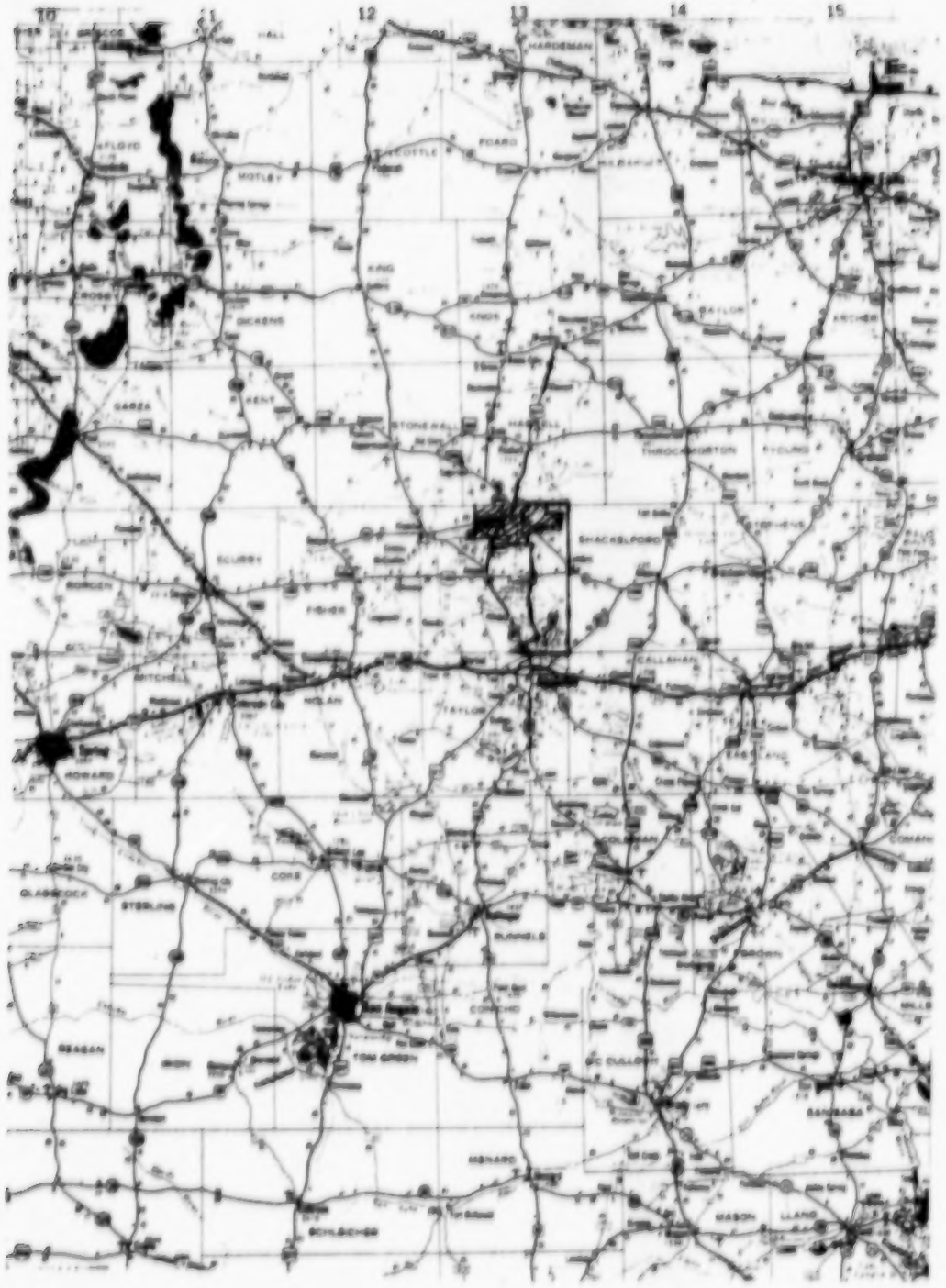
(1) determining the desire of a majority of the qualified voters within the district to dissolve it;

(2) disposing of or transferring the assets, if any, of the district; and

(3) satisfying the debts and bond obligations, if any, of the district, in such manner as to protect the interests of the citizens within the district, including their collective property rights in the assets and property of the district, provided, however, that any grant from federal funds, however dispensed, shall be considered an obligation

to be repaid in satisfaction and provided that no election to dissolve shall be held more often than once each year. In such connection, the statute shall provide against disposal or transfer of the assets of the district except for due compensation unless such assets are transferred to another governmental agency, such as a county, embracing such district and using such transferred assets in such a way as to benefit citizens formerly within the district. Adopted Nov. 6, 1962; As amended Nov. 8, 1966.

EXHIBIT G



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-1580

B. J. GIST, ET AL, *Petitioners*

vs.

STAMFORD HOSPITAL DISTRICT, ET AL,
Respondents

Response to Petition for Writ of Certiorari

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Fort Worth Brief Printing Co., 610 S. Jennings Street, 332-4070, 336-4334

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STAMFORD HOSPITAL DISTRICT, ET AL, *Respondents*

Response to Petition for Writ of Certiorari

The Stamford Hospital District and its Board of Directors, Respondents, respectfully file this Response to the Petition for Writ of Certiorari filed in this Honorable Court by B. J. Gist, Lem Ruark and Anita Harvey MacGregor seeking review of the judgment of the Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas at Eastland, Texas.

OPINION

The opinion in this cause is reported in 557 S.W.2d 556.

POINTS OF REPLY

1.

The decision of the Texas courts that an earlier suit brought by taxpayers attacking the constitutionality of an Act of the Legislature of the State of Texas

authorizing an expansion of the Stamford Hospital District upon obtaining proper voter approval and the election held on December 18, 1973 is *res judicata* of this cause brought by additional taxpayers attacking the same legislation and election on a different constitutional basis does not violate any right guaranteed the taxpayers by the Constitution of the United States.

2.

The Act of the Legislature of the State of Texas authorizing the expansion of the Stamford Hospital District upon obtaining proper voter approval and the election held on December 18, 1973 do not transcend any right of the taxpayers guaranteed to them by the Constitution of the United States.

STATEMENT OF THE CASE

The facts of this case are undisputed. These proceedings were instituted by B. J. Gist, Lem Ruark and Anita Harvey MacGregor, Petitioners herein, seeking a declaration that Chapter 563, Acts of the 63rd Legislature, Regular Session, 1973, authorizing an expansion of the Stamford Hospital District upon obtaining proper voter approval and the election held on December 18, 1973, were void because of the provisions of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States and for injunctive relief against the District and its Board to prevent them from assessing or collecting any taxes on the lands and properties of the Petitioners in the expanded portion of the District (Tr. 2-15).

Respondents, the Stamford Hospital District and its Board of Directors, joined by the Attorney General of Texas filed answers raising an affirmative defense that the suits of *Billy Vinson, et al v. Stamford Hospital District, et al* previously filed in that same 104th Judicial District Court, Jones County, Texas, and numbered on that court's docket as 11757 is *res judicata* of all issues in the present cause based on the doctrine of virtual representation (Tr. 16-18, 19-21A; Supp.Tr. 3-4). Subsequently, Respondents filed a Motion for Summary Judgment with Supporting Affidavit as authorized by Rule 166-A, Texas Rules of Civil Procedure (Tr. 22-26; Supp.Tr. 7-55). Attached to the Affidavit in Support of the Motion for Summary Judgment were certified copies of the pertinent instruments from the *Vinson* case (Supp.Tr. 13-54).

The certified copies of the record from the *Vinson* case established that on August 27, 1973, Senate Bill 450 became law as Chapter 563, Acts of the 63rd Legislature, Regular Session, 1973 (Supp.Tr. 13-20). The new statute was codified as an amendment to Article 4494q, Revised Civil Statutes of Texas, and authorized an expansion of the Stamford Hospital District upon approval by a majority of the qualified electors in an election which was duly called and held by the District's Board of Directors on December 18, 1973 (Supp.Tr. 13-20). The voters approved the expansion of the District at that election (Tr. 3; Supp.Tr. 13-20).

Following the election, Billy Vinson and five other taxpayers owning property and residing in the ex-

panded portion of the Stamford Hospital District filed suit on December 29, 1973, in the 104th Judicial District Court of Jones County, Texas, against the Stamford Hospital District and its Board of Directors seeking a declaratory judgment that the statute and the election held on December 18, 1973, were void because of the provisions of Article IX, Section 9 of the Constitution of the State of Texas and for injunctive relief to prevent assessing and collecting of taxes on the lands and properties of the taxpayers in the expanded district (Supp.Tr. 13-20). The District and its Board of Directors timely filed their Answer asserting the constitutionality of the statute and requesting the court for a declaratory judgment to that effect and to deny the injunctive relief sought by the taxpayers (Supp.Tr. 23-24). At the conclusion of the trial of the first cause, which was held before the court without the assistance of a jury, the court entered judgment in favor of the taxpayers (Supp.Tr. 25-27).

The cause was appealed timely to the Eastland Court of Civil Appeals and appeared on their docket as cause number 4735 styled *Stamford Hospital District, et al v. Billy Vinson, et al* (Supp.Tr. 50-54). The court entered Judgment on December 20, 1974, declaring the statute and election in question to be valid; denied the relief prayed for by the taxpayers; and reversed the trial court's judgment (Supp.Tr. 50-54). This decision, which is reported in 514 S.W.2d 358, was upheld by the Supreme Court of Texas on May 28, 1975, by overruling the Motion for Rehearing on the taxpayers' Application for Writ of Error. 18 Tex.Sup. Ct.Jr. 342.

A little over three months later on September 5, 1975, Petitioners here, B. J. Gist, Lem Ruark and Anita Harvey MacGregor represented by the same attorney who represented the taxpayers in the *Vinson* suite instituted this second suit for declaratory judgment and for injunctive relief by filing a petition almost identical to that of the first suit except for the names of the parties and the basis of the relief sought (Tr. 2-15). The constitutionality of the statute and election previously held valid in the *Vinson* suit was now being attacked by these Petitioners on the ground that the statute and election contravened the provisions of the Fourteenth Amendment of the Constitution of the United States (Tr. 2-15). This constitutional issue had not been raised in the *Vinson* suit but could have been raised there.

Following a hearing on the Motion for Summary Judgment, the court entered Judgment in favor of Respondents on the grounds that the *Vinson* suit is *res judicata* of the case at bar (Tr. 44-46).

Petitioners' pleadings in the trial court established that they are taxpaying property owners similarly situated in the expanded portion of the hospital district as were the taxpaying property owners who brought the *Vinson* suit (Tr. 2-15; Supp.Tr. 13-20). The depositions of Petitioners, which serve as a part of the summary judgment proof in support of the Motion for Summary Judgment, established the following undisputed facts:

All of the Petitioners were fully aware of the *Vinson* suit because they were aware of the public

meetings which were held to inform them and other property owners in the expanded portion of the District about the *Vinson* suit and to raise money to prosecute it (Ruark dep. 13-16; Gist dep. 10-11; MacGregor dep. 8-9). Petitioners Anita Harvey MacGregor and Lem Ruark contributed, or caused to be contributed, money to pay the attorneys' fees and expenses incurred in the *Vinson* suit (Ruark dep. 15, 17; MacGregor dep. 10). Petitioner Ruark stated in his deposition that he would have been a party of the *Vinson* suit "if they had needed" him (Ruark dep. 17). Finally, the deposition testimony recognized that the interests of all taxpayers in the District were represented in the *Vinson* suit in light of the statement by Mr. Ruark that he had asked the plaintiffs in the *Vinson* suit "whether we were going to win it or not" (Ruark dep. 13).

REASONS FOR NOT GRANTING THE WRIT

1.

The decision of the Texas courts that an earlier suit brought by taxpayers attacking the constitutionality of an Act of the Legislature of the State of Texas authorizing an expansion of the Stamford Hospital District upon obtaining proper voter approval and the election held on December 18, 1973 is *res judicata* of this cause brought by additional taxpayers attacking the same legislation and election on a different constitutional basis does not violate any right guaranteed the taxpayers by the Constitution of the United States.

The sole issue before this Honorable Court is whether or not the decision of the Texas courts that the *Vinson* suit is *res judicata* of the case at bar violates the rights of Petitioners here as guaranteed by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. The merits of the constitutional right asserted by Petitioners in the trial court are not before you. Only the procedure followed by the Texas courts is subject to review.

This Court has long held that "there has been a failure of due process *only*[1] in those cases where it cannot be said that the procedure adopted, fairly insures the protection of the interest of absent parties who are to be bound by it." *Hansberry v. Lee*, 311 U.S. 32, 42 (1940). The *Hansberry* opinion noted that it was a familiar doctrine of the Federal courts to bind absent members of a class to litigation where there is an identity of interest of the members of the class. 311 U.S. 42-43. The underyling rationale is clear that if an issue has been litigated in an earlier proceeding by one who stood in approximately the same shoes as does the party presently requesting relief, then nothing is lost to the subsequent party if the earlier judgment is treated as *res judicata*.

The record before this Honorable Court clearly establishes that the test set out in the *Hansberry* opinion is satisfied. The taxpayers in both suits were attacking the statute and the election. The rights alleged by the taxpayers in both suits are rights held in common by all of the taxpayers in the expanded portion of the

[1] Emphasis ours throughout, unless otherwise indicated.

district and not rights unique and peculiar to the individual taxpayers. The same attorney represented the taxpayers in both suits. The petition filed in the second suit was almost identical to the *Vinson* suit except that it alleged a Federal constitutional question. The identity of parties is further strenghtened in that Petitioners here were fully aware of the first suit and some of them even contributed money to the prosecution of the first suit. Petitioner Ruark recognized the identity of interest when he testified in his deposition that he had asked the taxpayers in the *Vinson* suit "whether we were going to win it or not" (Ruark dep. 13).

The decision of the Texas courts in this cause has its primary basis in the decision of *Cochran County v. Boyd*, Tex.Civ.App., 26 S.W.2d 364 (Amarillo, 1930), writ refused. The following language from the *Cochran County* opinion declaring the rule of law governing this cause and its reason for being illustrates why this rule of law is consistent with the test of this Court as enunciated in *Hansberry:*

> "The general rule is that, in the absence of fraud or collusion, a judgment for or against a county or other municipality is binding and conclusive upon all residents, citizens, and taxpayers, in respect to the matters adjudicated which are of general and public interests, and that *all other citizens and taxpayers similarly situated are virtually represented* in the litigation and bound by the judgment, and this applies especially to judgments relating to the validity of county bonds. 34 C.J. 1028 §1459.
>
> "The reason for this rule is stated by the same authority on page 1029, as follows: 'If this were not so, each citizen, and perhaps each citizen of each generation of citizens, would be at liberty to commence an action and to litigate the question for himself * * * If a judgment against the county in its corporate capacity does not bind the taxpayers composing the county, then, it would be difficult to imagine what efficacy could be given to such judgment.' " 26 S.W.2d 365-366.

The doctrine of virtual representation is not unique to Texas law, but is well established and followed throughout the United States. The Supreme Court of Missouri has recognized the importance of this doctrine as is seen from the following quote in its opinion of *Seibert v. City of Columbia*, Mo.Sup.Ct., 461 S.W.-2d 808, 811 (1971), to wit:

> "We are in full accord with the doctrine of virtual representation. It would be unthinkable in our system of jurisprudence to hold that each taxpayer of a municipality could bring a suit to attack an annexation and that *res judicata* would not apply because there was not an identity of parties. Of necessity, absent fraud or bad faith, all residents and taxpayers must be bound by the result of litigation of a public nature carried on by one in similar circumstances and having a common interest."

This rule of law upon which Respondents rest their case is a rule of the common law and thus has stood the test of time and served the people well. 40 Am.-Jur.2d 695-696 "Judgments" §539.

The doctrine of virtual representation by its very

definition does not bind persons who have personal rights that are peculiar to them and not held in common with the public at large. This is very well seen in the following quote from 50 Corpus Juris Secundum 338-339 "Judgments", §796, to wit:

> "The rule [res judicata by virtual representation] is frequently applied to judgments rendered in an action between certain residents or taxpayers and a state, municipality, county, or district, or board or officer representing it, it being held that all other citizens and taxpayers similarly situated are represented in the litigation and bound by the judgment, in the absence of fraud or collusion. The rule is applicable to persons who have notice of the suit, and even to persons without actual notice of the pendency of this suit.
>
> *The rule does not apply, however, to a person not a party with respect to his property or other private and individual rights not held in common with the public, nor does it apply to a taxpayer* who is not represented in the action or where the suit is not contested, although, where there is a real controversy, the fact that the suit is a friendly one is immaterial. *Of course, the rule does not apply to questions not passed on or to a suit on a different cause of action.*"

This Court has consistently held that where the doctrine of *res judicata* applies it covers not only the matters actually raised in the former suit but all matters which could have been raised. *Sea-Land Services v. Gaudet*, 414 U.S. 573, 573-579 (1974). The Court of Civil Appeals for the Eleventh Supreme Judicial District of Texas at Eastland, Texas, followed this statement of the law as is seen in the following quote from the opinion, to wit:

> " 'It is elementary that the prior suit are to be held to the rule that all issues and questions which could have been raised in such suit are now deemed to have been raised and litigated.' " 557 S.W.2d 557.

None of the authorities cited by Petitioners stand to the contrary of the preceding authorities. None of Petitioners authorities involved rights of the parties held in common with the public. All of the rights involved in those authorities were peculiar to the individuals there. Those decisions are sound and or not inconsistent with the doctrine of virtual representation which deals only with rights held in common by the public.

2.

The Act of the Legislature of the State of Texas authorizing the expansion of the Stamford Hospital District upon obtaining proper voter approval and the election held on December 18, 1973 do not transcend any right of the taxpayers guaranteed to them by the Constitution of the United States.

On April 25, 1977 this Honorable Court in cause number 76-1232 styled *C. E. Carter, et al v. Hamlin Hospital District, et al*, denied a petition for writ of certiorari wherein taxpayers attacking the expansion of the Hamlin Hospital District asserted the identical grounds for attacking Respondents in this cause. The

Court will note from its own records that the firm representing the petitioners in the *Carter* case is the same firm representing the Petitioners here. Therefore, based on the authority of *C. E. Carter, et al v. Hamlin Hospital District*, et al, 52 L.ed.2d 378, the Petition for Writ of Certiorari should be denied.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Respondents pray that this Honorable Court refuse to grant a Writ of Certiorari in this cause and by so refusing affirm the Judgments of the Courts of the State of Texas.

Respectfully submitted,

J. SHELBY SHARPE
203 Fort Worth Club Building
Fort Worth, Texas 76102

J. Shelby Sharpe
Attorney for Respondents

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of this Response to Petition for Writ of Certiorari has been served upon counsel for Petitioners, Mr. Frank Scarborough and Mr. J. R. Black, Jr., P. O. Box 356, Abilene, Texas, 70604, by placing the same in the United States Mail, properly addressed and postage prepaid on this 31st of May, 1978.

J. Shelby Sharpe
Attorney for Respondents